Importance of sole company directors or shareholders having a will

Why do directors need a will?

Difficulties can arise when an ordinary person dies without leaving a will. Their estate cannot be quickly wrapped up and dependants (widows, children, etc) can be left waiting lengthy periods before either the State or Territory Public Trustee steps in to manage the estate, or letters of administration are granted by the Court to someone else to administer it.

But when a sole director of a company dies without leaving a will the complications and distress can have an even greater impact. The death will usually leave the company without any person properly authorised to immediately manage the company.

Ordinarily, if a director of a company dies, the surviving directors can continue to manage the company and may even make a temporary appointment , pending the appointment of a new director by the members (shareholders) of the company.

Equally, if the sole shareholder of a company dies, the directors can continue to manage it until the beneficiaries under the will have the shares transferred to them.

Where the sole director is also the sole shareholder, however, the risk of uncertainty is much greater.

Section 201F of the *Corporations Act 2001* does provide that, in the event of the death of a single member/director of a proprietary company, the executor or other personal representative appointed to administer the deceased's estate may appoint a new director to the company. The director has all the powers, rights and duties of the deceased director and can keep the company running until shares are transferred to beneficiaries who may then appoint new directors if they wish.

As mentioned above, the executor is ordinarily and most efficiently appointed by means of a valid will.

Where there is no will, however, a near relative or other person would have to apply to the local Supreme Court for letters of administration to manage the estate and this could take some time- possibly weeks if not months. Alternatively, in the absence of any immediate relatives or other obvious people to deal with the estate, the Public Trustee may step in and administer the deceased estate but this process can also take months.

During that period when there is no director, the company may be completely unable to operate. With no-one properly authorized to make management decisions or act for the company, it may be unable to trade. Banks and other financial institutions in particular may be unwilling to accept instructions in relation to a company's trading account if they are not satisfied there is someone properly authorized to act for it. Equally, staff and suppliers may not be able to be paid, which can quickly have a deleterious effect on the reputation and value of the company to the beneficiaries of the estate.

If, on the other hand, a person is willing to purchase the company, they may not be able to do so quickly because there will be no recognized owner of the shares who can authorise their transfer until the testator has been appointed and settled the estate. Even if the final decision is taken to wind up the company so all beneficiaries can be paid out, the

delay of possibly several months may mean the value of the company will be much less than it might otherwise have been if it had been able to continue operating in the interim period.

What makes a will valid?

To be valid a will must be signed at the end by the testator, or by someone authorised by him or her, and the signature must be acknowledged by the testator in the presence of at least two witnesses who are not also beneficiaries under the will, who must themselves sign the will in the testator's presence.

If you are a sole shareholder/director of a company, you should have a will and, it is recommended that in this will you make provision for who is the beneficiary or beneficiaries of your shares.

This is **Information Sheet 73 (INFO 73).** Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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